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INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE

VIOLENCE AGAINST WOMEN

Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, on trafficking in women, women's migration and violence against women, submitted in accordance with Commission on Human Rights resolution 1997/44

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Executive summary

The purview of this report is "from voluntary migration to trafficking in women: the continuum of women's movement and the human rights violations perpetrated during the course of that movement".

The report details the evolution of the Special Rapporteur's position on trafficking. It includes an overview of the Special Rapporteur's work undertaken throughout the year in regard to trafficking. The report also provides a critique of the 1949 Convention for the suppression of the traffic in persons and the exploitation of the prostitution of others.

The report highlights the fact that women move and are moved, consensually and non-consensually, legally and illegally, for numerous reasons, including social, political, cultural and economic reasons. The element that distinguishes trafficking from other forms of movement is the non-consensual nature of trafficking. The need for a clear definition of trafficking, thus far lacking in international law, is emphasized. For the purposes of this report, the Special Rapporteur uses the following definition of trafficking. Trafficking in persons means the recruitment, transportation, purchase, sale, transfer, harbouring or receipt of persons: (i) by threat or use of violence, abduction, force, fraud, deception or coercion (including abuse of authority), or debt bondage, for the purpose of; (ii) placing or holding such person, whether for pay or not, in forced labour or slavery-like practices, in a community other than the one in which such person lived at the time of the original act described in (i).

It is emphasized that movement and migration, coupled with Governments' reactions to and attempts to restrict such movements through immigration and emigration policies and the exploitation of such attempts by traffickers, place women in situations in which they are unprotected or only marginally protected by law. Immigrant women are placed by the State in situations of enhanced vulnerability to violence because of the lack of independent legal protections afforded to both documented and, in particular, undocumented immigrant women. Thus, women who attempt to exercise their freedom of movement are often placed in vulnerable positions vis-à-vis the protection of their human rights. The report highlights the Special Rapporteur's concern about the apparent link between protectionist, anti-immigration policies and the phenomenon of trafficking. Additionally, the report raises concern over the law and order approach that is overwhelmingly adopted by Governments to combat trafficking. Such approaches are often at odds with the protection of human rights and may create or exacerbate existing situations that cause or contribute to trafficking in women.

The report addresses the root causes of migration and trafficking. It highlights the fact that the lack of rights afforded to women serves as the primary causative factor at the root of both women's migrations and trafficking in women. The failure of existing economic, political and social structures to provide equal and just opportunities for women to work has contributed to the feminization of poverty, which in turn has led to the feminization of migration, as women leave their homes in search of viable economic options. Further, political instability, militarism, civil unrest, internal armed conflict and natural disasters also exacerbate women's vulnerabilities and may result in an increase in trafficking.

States' responsibility to prevent, investigate and punish acts of trafficking in women and provide protection to trafficked persons is highlighted. Under the Universal Declaration of Human Rights and the numerous international and regional instruments to which States have agreed to be bound, Governments are responsible for providing protections to trafficked persons. In addition to treaty obligations, States have a duty to act with due diligence to prevent, investigate and punish violations of human rights and provide remedies and reparation to victims of violations. This duty extends to violations by both State and non-State actors.

Lastly, the Special Rapporteur sets out her conclusions and outlines several recommendations, at the root of which are the protection and promotion of women's human rights.

I. INTRODUCTION

A. The purview of the report - from voluntary migration to trafficking in women: the continuum of women's movement and the human rights violations perpetrated during the course of that movement

1. Trafficking in persons must be viewed within the context of international and national movements and migrations that increasingly are being undertaken owing to economic globalization, the feminization of migration, armed conflict, the breakdown or reconfiguration of the State, and the transformation of political boundaries. The Special Rapporteur highlights the fact that trafficking in women is one component of a larger phenomenon of trafficking in persons, including both male and female adults and children. Nonetheless, she would like to highlight the woman-specific character of many violations of human rights committed during the course of trafficking. She calls on Governments to respond to such violations of human rights through policies based on gender-awareness.

2. Despite recognition of trafficking as a global phenomenon that cuts across age and gender, in accordance with her mandate and expertise, the Special Rapporteur has limited this report to trafficking in women. However, the definition proposed and the analysis provided of core elements, trafficking routes, causes and consequences, etc., are not age specific and, in some cases, not gender specific and thus she hopes that this report may contribute to efforts to combat trafficking in children as well. The Special Rapporteur holds that the phenomenon of trafficking in children needs different, child-specific remedies that are likewise gender-specific.

3. Women move and are moved, with and without their consent, for a myriad of reasons. Trafficking in women must be understood to exist within a continuum of women's movement and migrations. The Special Rapporteur is of the firm belief that women and all other persons must enjoy freedom of movement. Trafficking in women, as the Special Rapporteur defines and understands it, is a particularly violent form of movement, which has to be prohibited. Nevertheless, the Special Rapporteur is of the opinion that trafficking must be considered in the broader context of violations that are committed against women in the course of their movement and migrations. While the experience of being trafficked may affect the level or degree of marginalization or violations that are perpetrated against women, trafficking is not the sole determinant of whether women's human rights are violated in the course of their national and international movements. Movement and migration, coupled with Governments' reactions to and attempts to restrict such movements through immigration and emigration policies, and the exploitation of such attempts by traffickers, place women in situations in which they are unprotected or only marginally protected by law. As such, women who attempt to exercise their freedom of movement are often placed in vulnerable positions vis-à-vis the protection of their human rights.

4. Overt forms of violence, including, but not limited to rape, torture, arbitrary execution, deprivation of liberty, forced labour and forced marriage, are perpetrated against women who seek to exercise their freedom of movement. Additionally, the discriminatory policies and practices of Governments, particularly those that seek to curb women's movement, help to create a climate in which such violations are officially tolerated, if not encouraged or in some cases perpetrated by State actors. The Special Rapporteur is concerned that, in some cases,

Governments, in their attempts to respond effectively to growing international concern about trafficking, may misconstrue the needs of victims and, in so doing, institute policies and practices that further undermine t'.. rights of women, especially the freedom of movement and the right to earn a living. It is for this reason that the Special Rapporteur believes that trafficking must be appropriately situated in its global context of movement and migrations and the feminization of such movement and migrations. As such, and with special emphasis on trafficking, it is the violations of women's human rights committed in the course of women's movements that this report seeks to highlight.

B. The evolution of the Special Rapporteur's position on trafficking

1. The Special Rapporteur's previous work on trafficking

5. As evidenced in her two prior reports on trafficking, the Special Rapporteur's position in respect of trafficking in women has evolved as her understanding of the complexities of trafficking has developed. The evolution of the Special Rapporteur's position may be seen in the divergent views expressed in her prior reports. The present report builds on the previous reports of the Special Rapporteur, in particular her reports on violence in the community (E/CN.4/1997/47), in which she included a section on trafficking in women and forced prostitution (paras. 71 (b) and 119), and her report on her visit to Poland on the issue of trafficking and forced prostitution (E/CN.4/1997/47/Add.1).

6. The Special Rapporteur would also like to note the work and reports of the Working Group on Contemporary Forms of Slavery and the Special Rapporteur on the sale of children on issues of trafficking.

2. Overview of the work undertaken by the Special Rapporteur during the year

7. This year the international community has commenced numerous initiatives on trafficking. The Special Rapporteur has followed such initiatives very closely and has officially intervened in the processes being undertaken. In particular, the Special Rapporteur would like to congratulate United Nations Member States for their efforts to elaborate a protocol to prevent, suppress, and punish trafficking in women to the draft international convention against transnational organized crime. The Special Rapporteur, however, would like to express her concern that the first modern international instrument on trafficking is being elaborated in the context of crime control, rather than with a focus on human rights. She views this as a failure of the international human rights community to fulfil its commitment to protect the human rights of women. In a statement to the Ad Hoc Committee on the Elaboration of a Convention against Transnational Crime of the Commission on Crime Prevention and Criminal Justice, she highlighted the inextricable link between the prevention and eradication of trafficking and the protection of the human rights of trafficked persons.

8. Member States of the South Asian Association for Regional Cooperation (SAARC) have undertaken to draft the first regional treaty on trafficking. The Special Rapporteur congratulates the SAARC countries on this initiative. She has communicated to SAARC Heads of State her concern that the SAARC convention should not conflict with either the above-mentioned trafficking protocol or their existing obligations under international law. She has encouraged

SAARC Governments to refrain from finalizing the convention until the trafficking protocol has been adopted, so as to avoid any possible conflicts between the two international instruments The Special Rapporteur regrets that, owing to regional tensions, the issue of trafficking has been sidelined

3 Overview of other United Nations work/projects on trafficking

9 For the first time, the High Commissioner for Human Rights has identified trafficking as one of her priority themes In 1998, the High Commissioner appointed an in-house working group on trafficking to identify the most effective role which the Office of the High Commissioner for Human Rights could take towards eradicating the practice Since that time, the High Commissioner has hired a focal point on trafficking, in order to assist her in understanding the complex issues of trafficking, develop a strategy to address trafficking from a human rights perspective and follow international developments on trafficking closely The High Commissioner made informal interventions in both the Vienna and the SAARC processes

C The definition of trafficking

10 At present, there is no internationally agreed definition of trafficking The term "trafficking" is used by different actors to describe activities that range from voluntary, facilitated migration, to the exploitation of prostitution, to the movement of persons through the threat or use of force, coercion, violence, etc for certain exploitative purposes Increasingly, it has been recognized that historical characterizations of trafficking are outdated, ill-defined and non-responsive to the current realities of the movement of and trade in people and to the nature and extent of the abuses inherent in and incidental to trafficking [1]

11 Rather than clinging to outdated notions of the constituent elements of trafficking, which date back to the early nineteenth century, new understandings of trafficking derive from an assessment of the current needs of trafficked persons in general, and trafficked women in particular New definitions also must be specifically tailored to protect and promote the human rights of trafficked persons, with special emphasis on gender-specific violations and protections

12 Trafficking is a dynamic concept, the parameters of which are constantly changing to respond to changing economic, social and political conditions Although the purposes for which women are trafficked change and the ways in which women are trafficked the countries from which and to which they are trafficked change, the constituent elements remain constant At the core of any definition of trafficking must be the recognition that trafficking is never consensual It is the non-consensual nature of trafficking that distinguishes it from other forms of migration The lack of informed consent must not be confused with the illegality of certain forms of migration While all trafficking is, or should be, illegal, all illegal migration is not trafficking It is important to refrain from telescoping together the concepts of trafficking and illegal migration At the heart of this distinction is the issue of consent

13 Documentation and research shows that trafficking occurs for a myriad of exploitative purposes to which trafficking victims have not consented, including but not limited to forced and/or bonded labour, including within the sex trade, forced marriage and other slavery-like practices It is the non-consensual and exploitative or servile nature of the purpose with which

the definition concerns itself. The Special Rapporteur, thus, believes that an expansive definition of trafficking that encompasses the common elements of the trafficking process is necessary. The common elements are the brokering, accompanied by the exploitative or servile conditions of the work or relationship in which the trafficked person ends up, coupled with the lack of consent in arriving at that position. The structure of the trafficking definition must distinguish trafficking as a separate violation from its component parts. For the purposes of this report, the Special Rapporteur uses the following definition of trafficking:

> "Trafficking in persons means the recruitment, transportation, purchase, sale, transfer, harbouring or receipt of persons:
>
> (i) by threat or use of violence, abduction, force, fraud, deception or coercion (including the abuse of authority), or debt bondage, for the purpose of
>
> (ii) placing or holding such person, whether for pay or not, in forced labour or slavery-like practices, in a community other than the one in which such person lived at the time of the original act described in (i)."

14. Subsection (1) of the definition covers all persons involved in the trafficking chain: those at the beginning of the chain, who provide or sell the trafficked person, and those at the end of the chain, who receive or purchase the trafficked person, hold the trafficked person in forced labour and profit from that labour. Criminalizing the activities of all parties involved throughout the process of trafficking would facilitate efforts to both prevent trafficking and punish traffickers.

15. The Special Rapporteur believes that the definition of trafficking should require that the movement or transport involved is such as to place the victim in an unfamiliar milieu where she is culturally, linguistically or physically isolated and denied legal identity or access to justice. Such dislocation increases trafficked women's marginalization and therefore increases the risk of abuse, violence, exploitation, domination or discrimination both by traffickers and by State officials such as the police, the courts, immigration officials, etc. Although the crossing of geographic or political borders is sometimes an aspect of trafficking, it is not a necessary prerequisite for these elements to be present. Trafficking occurs within, as well as across, national borders.

16. Although numerous separate abuses are committed during the course of trafficking, which themselves violate both national and international law, it is the combination of the coerced transport and the coerced end practice that makes trafficking a distinct violation from its component parts. Without this linkage, trafficking would be legally indistinguishable from the individual activities of smuggling and forced labour or slavery-like practices, when in fact trafficking does differ substantively from its component parts. The transport of trafficked persons is inextricably linked to the end purpose of trafficking. Recruitment and transport in the trafficking context is undertaken with the intent to subject the victim of the coerced transport to additional violations in the form of forced labour or slavery-like practices.

17. In order to address the exigencies of modern manifestations of trafficking in women, the definition of trafficking focuses on "forced labour or slavery-like practices", rather than narrowly focusing on prostitution or sexual exploitation. Documentation on trafficking patterns reveal that

trafficking is undertaken for numerous purposes, including but not limited to prostitution or other sex work, domestic, manual or industrial labour, and marriage, adoptive or other intimate relationships. The common elements found in all of the trafficking patterns are: (i) the lack of consent, (ii) the brokering of human beings, (iii) the transport, and (iv) the exploitative or servile conditions of the work or relationship. Thus, any definition of trafficking must capture these elements.

II. TRAFFICKING IN WOMEN

A. The history of international law relating to trafficking

18. International law relating to trafficking in women has an extensive history. This history, however, is characterized by a long string of ineffectual legal instruments that date back to 1904, when the first binding international legal instrument in this area, the International Agreement for the Suppression of the White Slave Trade, was adopted. Historically, anti-trafficking movements have been driven by perceived threats to the "purity" or chastity of certain populations of women, notably white women. The treaty, which focused on the protection of victims rather than the punishment of perpetrators, proved ineffective. Consequently, in 1910, the International Convention for the Suppression of White Slave Traffic, which bound the 13 ratifying countries to punish procurers, was adopted.

19. Subsequently, the drafters of the Covenant of the League of Nations deemed trafficking of such significance that they included "general supervision over the execution of agreements with regard to the traffic in women and children" within the League's mandate. Under the auspices of the League of Nations, both the 1921 Convention for the Suppression of Traffic in Women and Children and the 1933 International Convention for the Suppression of the Traffic in Women of Full Age, were concluded. The 1921 Convention called for the prosecution of persons who trafficked in children, the licensing of employment agencies and the protection of women and children who immigrate or emigrate. The 1933 Convention required States Parties to punish persons who trafficked women of full age, irrespective of the women's consent.

20. These four conventions on trafficking were eventually consolidated by the United Nations in the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (1949 Convention), which continues to stand as the sole international treaty on trafficking. This is not to say that the protections of trafficked persons' human rights are confined to the 1949 Convention. States have a duty to provide protection to trafficked persons pursuant to the Universal Declaration of Human Rights, as well as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the Convention on the Protection of the Rights of Migrant Workers and Members of their Families (not yet in force), the Slavery Convention, the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, and International Labour Organization Conventions No. 29 concerning Forced Labour and No. 105 concerning the Abolition of Forced Labour.

B. The 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others: a critique

21. Approaches to trafficking have been informed by the debate surrounding prostitution and the legal paradigms developed to address prostitution. There are four primary legal paradigms for addressing prostitution: (i) criminalization, (ii) decriminalization, (iii) legalization/regulation, and (iv) decriminalization combined with a human rights approach. Criminalization takes two forms: prohibition and toleration. Both criminalization approaches view sex work as a social evil that should be subjected to penal measures. Toleration treats sex work as a necessary evil. Legislation based on this perspective is generally silent on the legality of prostitution itself. Likewise, it refrains from specifically targeting the sex worker. The prohibitionist approach, however, seeks to abolish prostitution through the criminalization of all acts and actors, including the sex worker herself. Decriminalization is based on the view that sex work is often a personal choice, and thus a private matter between consenting adults. Thus, relationships between sex workers and pimps, brothel owners, clients and landlords and the acts arising out of such relationships are viewed as outside the purview of criminal law. Decriminalization seeks only to punish non-consensual acts. Legalization also seeks to address prostitution outside the purview of criminal law. Instead, it seeks to regulate prostitution through zoning, licensing and, in some cases, mandatory health checks. Lastly, decriminalization with a human rights approach calls for the protection of the legal rights of sex workers. Thus, it calls for decriminalization of prostitution and related acts, and the application of existing human rights and labour rights to sex workers and sex work.

22. Among these paradigms, the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others arises out of a prohibitionist perspective and seeks to criminalize acts associated with prostitution, though not prostitution itself. The 1949 Convention has proved ineffective in protecting the rights of trafficked women and combating trafficking. The Convention does not take a human rights approach. It does not regard women as independent actors endowed with rights and reason; rather, the Convention views them as vulnerable beings in need of protection from the "evils of prostitution". As such, the 1949 Convention does very little to protect women from and provide remedies for the human rights violations committed in the course of trafficking, thereby increasing trafficked women's marginalization and vulnerability to human rights violations. Further, by confining the definition of trafficking to trafficking for prostitution, the 1949 Convention excludes vast numbers of women from its protection. Documentation shows that trafficking is undertaken for a myriad of purposes, including but not limited to prostitution or other sex work, domestic, manual or industrial labour, and marriage, adoptive or other intimate relationships.

23. The 1949 Convention, which fails to define trafficking, focuses solely on trafficking for the purpose of prostitution. In accordance with article 1, Parties to the Convention agree to punish any person who, to gratify the passions of another: (1) procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person, (2) exploits the prostitution of another person, even with the consent of that person. Thus, under the treaty, trafficking is not a distinct, cognizable offence; the treaty equates trafficking with the exploitation of prostitution. Although the Convention obligates States Parties to undertake unspecified measures to provide social, medical and legal measures to end prostitution and

rehabilitate women, to repeal legislation for the registration of prostitutes and to provide some level of international cooperation, it does not address the causes or the situations that lead to trafficking.[2]

24. Notably, the 1949 Convention does not prohibit prostitution per se. Rather, it seeks to abolish prostitution by targeting and punishing third-party involvement in prostitution. In so doing, it defers greatly to national laws on issues of prosecution. As such, it does not prohibit States from prosecuting sex workers in addition to third parties. Although, practically, targeting third parties would seem to protect sex workers from being penalized, such applications under national law have shown that it is the women who suffer the burden of criminalization, even when laws are crafted solely or primarily to target procurers, pimps and johns. For example, this has reportedly been the case in India, where the Immoral Traffic (Prevention) Act, which does not make prostitution, per se, illegal, but targets solicitation, enticement, procuring, living off the earnings of prostitution, keeping a brothel, detaining persons in premises where prostitution is practised, etc., has been most apparently invoked against sex workers.

25. The 1949 Convention allows States to punish women who have been subjected to international trafficking by sanctioning their expulsion. In accordance with article 19 (2), States Parties are called upon to repatriate persons referred to in article 18 who desire to be repatriated or who may be claimed by persons exercising authority over them or whose expulsion is ordered in conformity with the law. Under the later parts of this clause, trafficked women, who do not have legal residency in the country, are likely to be deported. In the process of deportation, trafficked women may be subjected to detention (protective or punitive) and/or forced "rehabilitation".

26. The Convention, which has been adopted by a mere 69 countries, has weak enforcement mechanisms. Although the Convention requires States Parties to report annually to the United Nations Secretary-General in regard to implementation of the Convention at the national level, no independent treaty body has been established to monitor the implementation and enforcement of the treaty. Less than half of the 69 States Parties report. Since 1974, the Working Group on Contemporary Forms of Slavery, mandated under the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, has reviewed States action in respect of trafficking.[3] Although the Working Group is empowered to receive and publicly review information on trafficking, it lacks a mandate to take action on the reports.

C. Current definitions of trafficking under international law

27. Despite the lack of a coherent definition, increasingly international instruments, including the Convention on the Elimination of All Forms of Discrimination against Women, the Declaration on the Elimination of Violence against Women and the Rome Statute of the International Criminal Court, have included proscriptions on trafficking. Likewise, the World Conference on Human Rights and the Fourth World Conference on Women addressed trafficking in their conference documents. Regrettably, these instruments have not contributed to the development of a clear definition of trafficking itself.

28. Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women states: "States Parties shall take all appropriate measures, including legislation, to

suppress all forms of traffic in women and exploitation of prostitution of women." According to the travaux préparatoires (the legislative history of the treaty), a debate arose as to whether article 6 should call for States Parties to combat prostitution per se or merely the exploitation of prostitution. A proposal put forward by Morocco for the abolition of prostitution in all its forms was rejected and the emphasis was placed on trafficking and the exploitation of prostitution. Although this history gives us insight into the drafter's perspective, it too fails to provide a definition of trafficking or, for that matter, the constituent elements of "exploitation of prostitution". General Recommendation No. 19 of the Committee on the Elimination of Discrimination against Women goes farther in defining the parameters of the exploitation of prostitution. According to General Recommendation No. 19:

29. Poverty and unemployment increase opportunities for trafficking in women. In addition to established forms of trafficking there are new forms of sexual exploitation, such as sex tourism, the recruitment of domestic labour from developing countries to work in developed countries and organized marriages between women from developing countries and foreign nationals. These practices are incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity. They put women at special risk of violence and abuse.

30. According to the definition of violence against women set forth in article 2 of the Declaration on the Elimination of Violence against Women,

> "Violence against women shall be understood to encompass, but not be limited to, the following ... (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution."

31. The Rome Statute of the International Criminal Court includes enslavement (art. 7.1 (c)) in its list of crimes against humanity. According to article 7.2 (c), "enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children. This signifies the modern approach of linking trafficking to slavery-like practices.

32. The documents arising from the World Conference on Human Rights (1993) and the Fourth World Conference on Women (1995) both called upon States to combat trafficking, but failed to provide adequate definitions of the term. In the Vienna Declaration and Programme of Action, the World Conference on Human Rights stressed the importance of working towards the elimination of violence against women in public and private life. It addressed the issue of "international trafficking" as a form of gender-based violence and called for its elimination through international cooperation in such fields as economic and social development and through national legislation.[4] Whereas the Forward Looking Strategies of the Third World Conference on Women (1985) solely addressed traffic in women for prostitution and forced prostitution,[5] the Beijing Platform for Action reflects a broader understanding of trafficking. The Beijing Platform for Action, calls upon Governments to take appropriate measures to address the root factors, including external factors, that encourage trafficking in women and girls for prostitution and other forms of commercialized sex, forced marriages, and forced labour in order to eliminate

trafficking in women, including by strengthening existing legislation with a view to providing better protection of the rights of women and girls and to punish the perpetrators, through both criminal and civil remedies.[6]

33. The General Assembly, the Economic and Social Council, the Commission on Human Rights and the Commission on the Status of Women have all passed resolutions on trafficking. None of these resolutions, however, define trafficking. They include General Assembly resolution 50/167 of 22 December 1995, Commission on Human Rights resolution 1995/25 of 3 March 1995, Commission on the Status of Women resolutions 39/6 of 29 March 1995 and 40/4 of 22 March 1996, Commission on Human Rights resolution 1996/24 of 19 April 1996, Commission on Human Rights resolution 1997/19 of 11 April 1997, adopted without vote, Economic and Social Council resolution 1998/20 of 28 July 1998, Commission on Human Rights resolutions 1998/30 of 17 April 1998 and 1999/40 of 26 April 1999.

34. Despite the plethora of international instruments, there is no clear or agreed upon definition of trafficking. An assumption seems to have been made by the international community of a shared understanding of trafficking. Because of its traditional links with the debates on prostitution outlined above, the definition of trafficking has been a contentious issue. Increasingly, however, the various sides of the debate are attempting to reconcile their differences and are seeking to build consensus in the name of protecting the human rights of trafficked women.

III. VIOLATIONS PERPETRATED AGAINST WOMEN IN THE COURSE OF MOVEMENT

A. Violence against women

35. Because of the lack of independent legal protections afforded to both documented and, in particular, undocumented immigrant women, exacerbated by immigrant women's social and cultural marginalization, immigrant women are placed by the State in situations of enhanced vulnerability to violence. Women move and are moved, consensually and non-consensually, legally and illegally, for a myriad of social, political, cultural and economic reasons. Women's movement is increasingly impeded by legal obstacles erected by the State and thus women and their movement are increasingly forced underground.

36. The Global Survival Network has identified four types of situations that result in women's and girl's involvement in the sex trade.[7] The Special Rapporteur's own research suggests that these typologies could also be applied to other forms of labour for which women migrate or are trafficked. The first group includes women who have been completely duped and coerced. Such women have no idea where they are going or the nature of the work they will be doing. The second group comprises women who are told half-truths by their recruiters about their employment and are then forced to do work to which they have not previously agreed and about which they have little or no choice. Both their movement and their power to change their situation are severely restricted by debt bondage and confiscation of their travel documents or passport. In the third group are women who are informed about the kind of work they will be doing. Although they do not want to do such work, they see no viable economic alternative, and therefore relinquish control to their trafficker who exploits their economic and legal vulnerability

for financial gain, while keeping them, often against their will, in situations of debt bondage. The fourth group is comprised of women who are fully informed about the work they are to perform, have no objections to performing it, are in control of their finances and have relatively unrestricted movement. This is the only situation of the above four that cannot be classified as trafficking.

37. These typologies highlight the changing nature of the experiences of women who move or are moved. Women's status often does not remain fixed: their position may shift between the four categories. Throughout the course of their movement, irrespective of how, why or where they move, women are subjected to myriad forms of violence. Women's vulnerability in terms of violations of their rights and violence against them increase as their marginalization increases. Thus, trafficked women, by the mere nature of the definition of trafficking proposed above, are more likely to suffer violence, particularly in the light of the atmosphere of impunity that exists in respect to violations committed by traffickers and the lack of rights, remedies and redress afforded to trafficked persons.

38. As discussed above, the characteristic that distinguishes trafficking and facilitated migration is the non-consensual nature of trafficking. Violence and threats of violence are common - perhaps the most common - forms of coercion employed against trafficked women. In particular, rape and other forms of sexual violence are often used to break trafficked women physically, mentally and emotionally and to obtain their enforced compliance in situations of forced labour and slavery-like practices. Rape and other forms of sexual violence are used as weapons against migrant women irrespective of the nature of the work they are to perform. Forms of sexual violence, however, are most persistently used against trafficked women to "condition" them for forced sex work.

39. Whether locked in a sweatshop or factory, or locked in a brothel, migrant women and trafficked women are often subjected to arbitrary and enforced deprivation of liberty at the hands of both non-State and State actors. Women's movement is either overtly impeded through locks, bars and chains or less conspicuously (but no less effectively) restricted by confiscation of their passports and travel documents, stories of arrest and deportation, threats of retaliation against family members, or threats that the nature of their work will be revealed to family and community members, and physical violence. Traffickers use the law, and the threat of deportation, to their advantage. "To immobilize their victims psychologically and prevent their escape, frequently they threaten the women with deportation. Since deportation implies risks to the women's families because of the still existing smuggling debt, public humiliation and ostracization because of disclosure of the woman's activity, and possibly further victimization, this threat is highly effective."[8] Some advocates have compared the violence perpetrated against trafficked women to torture and cruel or inhuman treatment in violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

40. An aspect of the definition of trafficking used by the Special Rapporteur is the fact that victims of trafficking end up in situations of forced labour or slavery-like practices, both of which are enforced by and constitute violence in their own right. Women overwhelmingly perform the highest percentage of unskilled paid labour, including assembly-line labour, cleaning, cooking and caring work, either in private houses as domestic workers or in restaurants and hotels, or as entertainers and sex workers.[9] These jobs are usually the lowest paid jobs, with

few to no occupational protections, labour rights or job security. In addition, lack of or inadequate laws and labour standards, and the illegal or semi-legal nature of the work form the basis for forced, servile and exploitative working conditions, varying from humiliating treatment, low payment and extreme working hours to bonded labour or forced labour.

41. In the case of international migration for marriage, legal residence is often linked to the citizen husband's continuing sponsorship. As a consequence, women who enter the marriage market either by choice or by deception, force or coercion, are placed in vulnerable positions under the law. Many immigrant wives are subjected to domestic violence, including marital rape, but have little or no access to legal remedies. To seek the assistance of the police or the judiciary may be to make themselves subject to immediate deportation, which is often not desired by the women. Thus, the lack of formal mechanisms of redress reinforces and legitimizes the women's forced and servile domestic situation. Increasingly, however, countries such as the United States are creating legal exemptions for battered immigrant women, whereby they are able to obtain or retain their legal residency status irrespective of their husband's continuing sponsorship.

B. Discriminatory practices that cause or contribute to violence: restrictions on mobility, nationality laws, equal protection, labour rights, etc.

42. In the past few years, the international community and Governments have consistently expressed their concern about trafficking in women.[10] The Special Rapporteur welcomes this trend and would like to encourage Governments in their efforts to find ways and means of protecting and promoting the human rights of trafficked persons and combating trafficking. However, while Governments have been endeavouring to seek ways and means to combat trafficking, they (particularly Governments of northern countries) simultaneously have been taking measures to fortify their external borders against the perceived threat of unfettered immigration. Such policies may conflict with strategies to effectively combat trafficking and protect the rights of trafficked persons. The Special Rapporteur urges Governments to ensure that immigration laws are compatible with international human rights standards.

43. On the issue of trafficking, Governments overwhelmingly adopt a law and order approach, with an accompanying strong anti-immigration policy. Such an approach is often at odds with the protection of human rights. Further, while many government policies may be inspired by benevolent intentions, they often serve to either create or exacerbate existing situations that cause or contribute to trafficking in women. Policies and practices that either overtly discriminate against women or that sanction or encourage discrimination against women tend to increase women's chances of being trafficked.

44. Despite the fact that trafficked women, and more generally undocumented migrant women, are often the victims of crime, they are often perceived and treated as criminals in countries of destination. The media, often encouraged by the official anti-immigration policies of the State, create and propagate the image of the immigrant as criminal. Such perceptions are caused by the intersection of racism and xenophobia, which is increasingly found implicit in the official policies of highly industrialized States. Such stereotyping serves to marginalize and increase the vulnerability of undocumented immigrants. Further, in addition to all the risks that

their male compatriots shoulder, female migrants face threats to their bodily integrity because of the ever present, added risk of sexual abuse by the smugglers, male migrants and even police and immigration officials. Even if they are victimized, however, these undocumented migrants continue to be classified as criminals because of their immigration status and attendant offences which they may have committed [11]

45. The arrest, in December 1998, of 53 trafficked women in Toronto highlights the problems of a law enforcement approach. The women, who were reportedly trafficked from Asia into Canada and sold for approximately $16,000-$25,000 (Canadian), were then forced to work off an approximately $40,000 debt. Although the year-long operation was meant to target the agents behind the operation, the women were likewise arrested and charged on prostitution-related charges. Some women also faced charges under the Immigration Act. The women's bail was set at $1,500. The women described situations of forced labour and sexual slavery and the traffickers were charged with forcible confinement. Nonetheless, law enforcement agents were hesitant to label the operation sexual slavery owing to the existence of "contracts", under which the women's travel documents were confiscated, their movements restricted and they were forced to work off their debt by performing approximately 400-500 sex acts. Because some of the women had agreed to migrate to work in the sex trade, law enforcement agents concluded that "they knew exactly what they were getting into".

46. In particular, the Special Rapporteur is concerned that many Governments equate illegal migration, particularly illegal migration for prostitution, with trafficking in women. Illegal migration is not trafficking per se, even though some trafficking is undertaken by means of illegal migration. Similarly, the illicit smuggling of human beings is not per se trafficking, even though some traffickers may smuggle trafficking victims across borders. In some cases, the distinction may be subtle. However, in terms of crafting policy to address trafficking, it is essential that the distinction be made. Laws and policies on immigration designed to combat or prohibit illegal migration or migrant smuggling may cause or contribute to trafficking by lessening access to legal measures by trafficked parties. It is essential that Governments ensure that such laws are compatible with their obligations and their stated intentions to combat trafficking in persons.

47. The Governments of many countries have responded to calls to combat trafficking by restricting women's rights to freedom of movement and mobility. Reportedly, Nepal and Romania are two such countries. The Special Rapporteur is disturbed by the increasing use of "profiles" of potential victims. The profiling of potential victims leads to discrimination against women, not only based on their sex, but also on their economic and marital status.

48. According to reports, in 1998 in Braila, Romania, sex workers were summoned to the local police station, where their passports were confiscated. Reportedly, the women were informed that the denial of travel documents was being undertaken to protect Romania's international reputation. Many of the women targeted undertook consensual migratory sex work in Turkey, but did not engage in sex work in Romania. The women were also threatened with arrest and imprisonment for numerous fabricated offences relating to domestic sex work, as well as exposure in their communities and families.

IV. ACCOUNTABILITIES FOR VIOLATIONS OF WOMEN'S HUMAN RIGHTS

49. The Special Rapporteur would like to highlight the precedent-setting case which, according to reports, was successfully prosecuted in the United States by the Justice Department in Washington D.C. and the US Attorney's office in south Florida against 15 members of the Cadena family, who were trafficking women from Mexico to the United States. The leader of the ring pleaded guilty to charges that he headed a group that trafficked at least 23 women into the United States. The women were reportedly lured to the United States with promises that they would be employed as nannies and domestic workers, but were then forced to work as sex workers. The women were allegedly forcibly kept in slavery-like conditions. They were locked in windowless rooms and were given no money. They were forced to work until they repaid a $2,000 smuggling fee. The traffickers threatened the women with reprisals against their families if they tried to escape. In addition to jail terms of up to 15 years, the convicted parties were ordered to pay restitution to the women in the amount of $1 million.

A. Direct State responsibility

50. The State becomes directly responsible for an act of one of its actors, even if such an act was undertaken outside the scope of the State actor's official capacity. States are also responsible for the actions of non-State actors that are carried out on the State's behalf. As such, in the context of trafficking, a State is responsible for acts committed by its own actors, be they immigration officials, border patrols or police. "States have a responsibility to provide protections to trafficked persons pursuant to the Universal Declaration of Human Rights and through ratification or accession to numerous international and regional instruments."[12] Such protections are found in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (not yet in force), the Slavery Convention, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, and International Labour Organization Conventions No. 29 concerning Forced Labour and No. 105 concerning the Abolition of Forced Labour.

B. Due diligence

51. In a two-year study, the Global Survival Network found cases in which the police were actively involved in trafficking. The more common scenario, however, was that the police knowingly turn a blind eye to trafficking and thus failed in their duty to provide protection to victims of trafficking. "International human rights instruments impose a duty upon States to respect and ensure respect for human rights law, including the duty to prevent and investigate violations, to take appropriate action against violators and to afford remedies and reparation to those who have been injured as a consequence of such violations."[13] These duties combine to constitute the State's duty to act with due diligence to "prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted by the damages resulting from the violation".[14]

52. In addition to being articulated in international instruments themselves, the due diligence standard, as articulated in the Velásquez-Rodriquez case, has been widely accepted as the measure by which State responsibility for violations of human rights by non-State actors is assessed. The Special Rapporteur would like to highlight, in addition to her previous reports, the prominence that has been given to the due diligence standard, inter alia, in reports by other Special Rapporteurs, including the Special Rapporteurs on torture, on extrajudicial, summary and arbitrary executions, and on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self determination, reports by representatives of the Secretary-General, including the Representative on internally displaced persons, by treaty bodies such as the Committee on the Elimination of All Forms of Discrimination against Women, and the Committee on the Elimination of All Forms of Racial Discrimination, by expert group meetings such as the meeting on children and juveniles in detention, in resolutions and declarations, particularly on violence against women, and writings by publicists.[15]

53. Due diligence requires more than the mere enactment of formal legal prohibitions. The States' measures must effectively prevent such actions. Failing effective prevention, a prompt and thorough investigation, resulting in prosecution of the culpable parties and compensation for the victim, must be undertaken. In order to comply with the due diligence standard, the State must act in good faith. Accordingly, the Inter-American Court stressed that States must employ all means of a legal, political, administrative and cultural nature that promote the protection of human rights, and ensure that any violations are considered and treated as illegal acts, which, as such, may lead to the punishment of those responsible and the obligation to indemnify the victims for damage.[16] The European Commission has likewise found that the European Convention is intended to guarantee not rights that are theoretical or illusory, but rights that are practical and effective.[17] The Special Rapporteur, in her 1999 report on domestic violence (E/CN.4/1999/68), enumerated a list of considerations in assessing State compliance with the due diligence standard.

V. LACK OF RIGHTS AND DENIAL OF FREEDOM: THE ROOT CAUSES OF TRAFFICKING

54. The root causes of migration and trafficking greatly overlap. The lack of rights afforded to women serves as the primary causative factor at the root of both women's migrations and trafficking in women. While such rights inevitably find expression in constitutions, laws and policies, women nonetheless continue to be denied full citizenship because Governments fail to protect and promote the rights of women. In the home, in the community and in State structures, women are discriminated against on numerous, intersecting levels. The most extreme and overt expression of such discrimination is physical and psychological violence against women. Violence is a tool through which discriminatory structures are strengthened and the more insidious and subtle forms of discrimination experienced by women daily are reinforced. By failing to protect and promote women's civil, political, economic and social rights, Governments create situations in which trafficking flourishes.

55. Gender-based discrimination intersects with discriminations based on other forms of "otherness", such as race, ethnicity, religion and economic status, thus forcing the majority of the world's women into situations of double or triple marginalization. Not only are women discriminated against as women, but as ethnic, racial or linguistic minorities and as ethnic, racial

or linguistic minority women. Because discrimination based on ethnicity, race, religion, etc. is imbedded in State and social structures, such discrimination decreases the rights and remedies available to women and increases women's vulnerability to violence and abuse, including trafficking. For example, the Rohingya women, in northern Arakan State, Myanmar, have been rendered stateless by the fact that Myanmar denies the Rohingya citizenship. Owing to their undocumented status, they are unable to move freely across borders. For this reason, the Rohingya rely on facilitated migration. The women, in particular, become victims of traffickers who prey on their predicament.

56. The failure of the State to guarantee women's rights leads to sexual and economic exploitation of women in both the home and the community and within the local, national and global economies. Economic, political and social structures and the models of development that arise from such structures have failed women. They have failed in their attempts to provide basic economic and social rights to all people, particularly to women, and have further entrenched sex-based divisions of education, labour and migration. Basic rights, such as to food, shelter, education, employment, a sustainable living and peace have been denied to a large percentage of the world's population, of which women comprise a large portion.

57. Trafficking in women flourishes in many less developed countries because the vulnerabilities arising from women's lack of access to resources, poverty and gender discrimination are maintained through the collusion of the market, the State, the community and the family unit. Traditional family structures, which are based on the maintenance of traditional sex roles and the division of labour that derives from such roles (for women, housekeeping, care-taking and other unpaid or underpaid subsistence labour), support the system of trafficking. Further, feudal and exploitative social structures have given rise in many countries, such as Nepal and Bangladesh, to consumerism and a skewed, gender, caste and class based resource distribution system. This in turn legitimates discrimination against women at the community level, as represented by uneven division of wage labour and salaries, citizenship rights and inheritance rights, and at the family level through the high preference for male children and the resulting discriminatory practices against girls that are perpetrated throughout their life cycle.[18] The preference for male children and the culture of male privilege deprives girls and women of access to basic and higher education and, consequently, illiteracy rates among women remain high. In addition, certain religious and customary practices, reinforced by government policies, further entrench and validate discrimination and perpetuate the cycle of oppression of women.

58. Womens lack of rights and freedoms is exacerbated by external factors such as the ever-widening gap between rich and poor countries, and within those countries, between rich and poor communities. The economic, social and political inequalities that exist between rural and urban, majority and minority, and industrialized and industrializing, increasingly are leading to internal as well as international political instabilities and violent upheavals such as those that were witnessed in Albania in 1997 and in Indonesia in 1998, during which women are targeted by particularized forms of violence, such as rape. The failure of existing economic, political and social structures to provide equal and just opportunities for women to work has contributed to the feminization of poverty, which in turn has led to the feminization of migration, as women leave their homes in search of viable economic options.

59. Globalization may have dire consequences for human rights generally and women's human rights particularly, in terms of eroding civil, political, economic, social and cultural rights in the name of development and macro-level economic restructuring and stability. In the countries of the South, structural adjustment programmes have led to increased impoverishment, particularly amongst women, displacement and internal strife resulting from the political instabilities caused by devaluing national currencies, increasing debt and dependence on foreign direct investment. The crisis in ASEAN countries is an indicator that globalization policies can result in disaster if not properly managed. The economic crisis in East Asia has resulted in many women being trafficked to escape from sudden poverty. In some countries, development policies and practices have led to large-scale displacements of local populations. The Narmada Valley dam project in India, which is being protested by thousands of villagers in the Narmada Valley who will be displaced by the project, is an example of the destabilizing capacity of "development". The destabilization and displacement of populations increase their vulnerability to exploitation and abuse through trafficking and forced labour. Political instability, militarism, civil unrest, internal armed conflict and natural disasters also exacerbate women's vulnerabilities and may result in an increase in trafficking. According to reports, most recently, trafficking networks responded to the war in Kosovo and consequent exodus of refugees by increasing recruitment of Kosovars. The Special Rapporteur is particularly concerned by reports of United Nations peacekeepers involvement in violence against women and calls on the United Nations to take measures to prevent such violence and to punish it when it arises. The United Nations will loose its moral force if it fails to respond when those within the United Nations system violate human rights.

60. In the absence of strong measures to protect and promote the rights of women, trafficking thrives. When women do not have rights or when such rights are trampled upon by policies and practices of the Government, including policies that relinquish the traditional powers of the State to non-State corporate entities, socially vulnerable groups, including women, are made more vulnerable. In the absence of equal opportunities for education, shelter, food, employment, relief from unpaid domestic and reproductive labour, access to structures of formal State power, and freedom from violence, women will continue to be trafficked. Policies and practices that further curtail women's rights and freedom, such as those that restrict women's movement and limit safe and legal modes of immigration, serve only to entrench trafficking. Therefore, the responsibility for the existence and perseverance of trafficking rests squarely with the State. The State is ultimately responsible for protecting and promoting the rights and freedoms of all women.

VI. THE IMPACT OF IMMIGRATION LAWS AND POLICIES ON TRAFFICKING AND MIGRATION

61. The Special Rapporteur is concerned by the apparent link between protectionist, anti-immigration policies and the phenomenon of trafficking. Restrictive and exclusionary immigration policies, when combined with the destabilizing effects of conflict, globalization and neo-liberal development strategies which result in increasing outflows of legal and illegal migrant labour, serve as important causative factors in the persistence and prevalence of trafficking. Anti-immigration policies aid and abet traffickers. Documentation shows that inflexible policies of exclusion, which are enforced through severe punishments of a penal nature and deportation for their breach, feed directly into the hands of traffickers. The availability of legal migrant work, which is subject to government regulation and scrutiny, reduces the reliance

on third parties of those who seek to migrate for work. Trafficking economies - which arise out of a combination of supply, demand and illegality - are less likely to develop in situations in which opportunities exist for legal migrant work. Increasingly, highly industrialized countries such as those in Europe, North America and Asia have placed restrictions on legal, long-term immigration. Strong anti-immigration regimes are increasingly typical in these countries and are justified by Governments as a component of a rational policy of protectionism and deterrence arising out of economic imperatives. For example, since the end of the Cold War and the establishment of democratic rule in Eastern Europe, Western Europe has responded by tightening its external borders. European migrations from East to West are seen as both a threat to domestic security and to European unity. As a consequence, restrictions on immigration have increased, and with them, trafficking has reportedly increased.

62. Illegal border crossing is increasingly met with stiff penalties both for third parties who facilitate clandestine entries and for undocumented immigrants whose migration is facilitated through illegal means. Penalties for illegal entry range from six months' imprisonment in Denmark, the Netherlands, Norway and the United Kingdom, to one year's imprisonment in Belgium, France and Germany, to two years' imprisonment in Canada and Italy. Strict anti-immigration policies, which reduce opportunities for legal migration and thereby encourage migrants to turn to third parties for assistance in migrating and to rely on false promises of legal migration, serve to provide an ever-growing number of clients to the increasing number of underground networks of immigrant smugglers. Further, such policies impact strongly on the living and working conditions of migrant workers, increasing their vulnerability to violence, abuse and control by criminal networks.[19]

63. Increasingly, and often justified as a response to trafficking, policies that restrict the movement of women are being instituted in countries of origin. Some countries, including Myanmar and Poland, have legally prohibited exiting the country without permission. The Immigration and Manpower Act in Myanmar, for example, prohibits the leaving of that country without proper authorization. As such, persons trafficked from Myanmar or Poland face punishment on two fronts: in the destination country and, when they return or are returned, in their country of origin.

64. Overwhelmingly, migrant women are not allowed to work legally in the sex sector. Thus, migrant sex workers' immigration status is generally undocumented, making them more vulnerable to violence, abuse and control by traffickers. Many countries, including the United States, Japan, Turkey, Cyprus and Uganda, legally bar persons engaged in or living off the proceeds of prostitution from entering the country and subject such persons to arrest, detention (sometimes prolonged) and deportation if they do succeed in entering the country. While some countries, such as Switzerland, Belgium and Japan, provide special entertainers' or artists' visas for sex work, a few, including Suriname, Aruba and Curaçao, openly provide working permits for foreign sex workers.

65. As an aspect of their immigration policies, many northern countries have introduced laws to combat sham marriages between nationals and non-nationals. Such laws have resulted in higher fees and hence greater vulnerability for women seeking to enter the marriage market. The penalties associated with sham marriages increase immigrant women's vulnerability to domestic violence since their legal immigration status is often dependent on maintaining the marital

relationship, thereby increasing the power disparity between the citizen husband and the immigrant wife. Increasingly, countries such as the United States have introduced exceptions to sponsorship requirements in cases of domestic violence against immigrant women.

66. In some countries, undocumented immigrants are required to cover the expenses associated with their deportation, and thus languish in immigration detention facilities or prisons - sometimes held in common cells with convicted criminals - until they are able to obtain sufficient funds. Thus, undocumented immigrants may be subjected to custodial violence. Cases of custodial rape and other forms of sexual violence against undocumented immigrant women detained for deportation have been reported. Due to their double marginalization, undocumented immigrant sex workers are particularly vulnerable to rape and other forms of sexual violence and sexual misconduct.[20]

67. In the overwhelming majority of countries of destination, deportation remains the primary mechanism for dealing with undocumented immigrants, including trafficked persons. Generally, government officials in the countries of destination fail to distinguish between categories of undocumented immigrants, treating victims of trafficking in the same way as perpetrators of crimes. Further, countries of destination rarely accept responsibility for their complicity in trafficking, despite the fact that they too have failed to act with due diligence to protect and promote human rights in their territory. Instead, they seek merely to rid their territory of undocumented immigrants. Some trafficked women want to return to their countries of origin to escape abuse and violence. Others, however, fear stigmatization, rejection by their families, prosecution by the Government or reprisals by their traffickers if they return. However, the trafficked woman's wishes are rarely taken into consideration. Irrespective of her wishes, deportation is the States' preferred legal solution. "Deportation implies not only returning to the conditions which the women attempted to leave in the first place, but often also intimidation and threats by the smuggling operation either because the women owe the traffickers money for their failed trip or because they testified or are perceived to have provided information against the procurers".[21]

VII. CURRENT PATTERNS OF TRAFFICKING AND MIGRATIONS

68. Trafficking routes replicate migration routes: the movement has traditionally been from South to North. However, modern trends show that trafficking also occurs within regions, as well as within regions and within States. Like migration routes, trafficking routes and countries of origin, transit and destination may change rapidly owing to political and economic changes. The Special Rapporteur would like to highlight the following countries, which have been brought to her attention as countries of origin and/or countries of destination. She would like to point out, however, that this is not an exhaustive list of countries or areas of origin or destination.

69. Countries or areas of origin: Afghanistan, Albania, Bangladesh, Belarus, Bulgaria, Cambodia, China, Colombia, Croatia, Hungary, India, Indonesia, Jamaica, Kosovo, Latvia, Lithuania, Mexico, Myanmar, Nepal, Pakistan, the Philippines, Poland, Russia, Romania, Slovakia, Thailand, Ukraine, countries of the former Soviet Union, Viet Nam.

70. Countries or areas of destination: Austria, Australia, Belgium, Canada, China (including Hong Kong and Macao), Cyprus, Dubai, the Federal Republic of Yugoslavia, Greece, Germany,

Hungary, India, Israel, Italy, Japan, Malaysia, the Netherlands, Pakistan, Poland, Saudi Arabia, Singapore, Spain, Switzerland, Taiwan, Thailand, Turkey, the United Kingdom, the United States, and the United Arab Emirates.

71. Trafficking, however, does not necessarily involve the crossing of international borders. Internal trafficking occurs in most of the above countries or areas as well. Further, trafficking is not stagnant. Trafficking routes continue to change.

72. Much has been and continues to be written about trafficking and migration. Feeding off and feeding into anti-immigration sentiments of highly industrialized countries, Governments, non-governmental organizations and the media reveal increasingly growing numbers of women who are being trafficked.[22] The United States State Department recently claimed that 50,000 women are reportedly trafficked into the United States each year.[23] The International Organization for Migration has been cited as estimating that 500,000 women are trafficked into Western Europe alone. The United Nations has estimated that 4 million persons are trafficked each year. Such figures are unreliable, however. Because of the underground nature of trafficking, reliable statistics are difficult, if not impossible, to collect. Further, the lack of a clear definition of trafficking poses a further limitation in the compilation of figures or statistics. Often, both governmental and non-governmental sources treat undocumented immigrants as one category irrespective of whether such immigrants were smuggled or trafficked.

73. Although documentation suggests that trafficking is a truly global phenomenon, the governmental and non-governmental attention and resources devoted to addressing trafficking clearly vary, not only from country to country, but also from region to region. Whereas there are organizations and projects that address trafficking in South Asia, South-East Asia, North America, and Western, and increasingly Eastern Europe, little information is available from Africa and Latin America. Interestingly, in both of these regions, greater emphasis seems to be placed on women's migration than on trafficking. Likewise, the discourse appears to be focused more on economics than on violence. This could account for the difference.

74. Information on trafficking in Asia is most readily available. There are well documented trafficking routes within South Asia, from Bangladesh, Nepal and Pakistan to India, and widely within India, particularly to the cities of Calcutta and Bombay. The political situation in Myanmar has contributed to a trafficking outflow, particularly of Karen women. There is also widespread trafficking from South Asia to the Middle East, particularly for domestic labour. Likewise, trafficking within and from South-East Asia has been widely recorded. According to the Government of the Philippines, the largest source of foreign exchange has been overseas migrant labour. In 1995, there were 4.2 million Filipinos working abroad. Trafficking occurs within and to China from bordering countries largely for forced marriages. According to information, women and girls from the People's Democratic Republic of Korea are being trafficked to China for forced marriages to Chinese farmers and labourers throughout the country. Reportedly, others are being sold to karaoke halls and brothels. Increasing levels of poverty and decreasing levels of employment are said to be contributing to an increase in trafficking of women from the People's Democratic Republic of Korea to China.

75. There is a dearth of information about trafficking from, in and throughout Africa. Increasingly, however, the existence of trafficking networks within Africa is being revealed.

The Special Rapporteur notes an urgent need for research and documentation on trafficking from and within Africa. According to reports, women in Mauritania are being trafficked internally between ethnic groups [24]. As many as 25,000 Kenyans are reported to be living in inhuman and degrading conditions in the Middle East as a result of trafficking. With unemployment soaring within their own country, Kenyans increasingly are seeking to migrate for job opportunities abroad. Although many are able to secure legitimate jobs with the help of official foreign employment agencies, numerous others are turning to bogus employment agencies and ending up in slavery-like conditions of forced labour. Racial, ethnic and religious minorities in the Sudan, in particular the Nuba, are reportedly being trafficked and sold into slavery. The Special Rapporteur would like to highlight the conclusion of the Special Rapporteur on the situation of human rights in the Sudan in that the abduction of persons, mainly women and children belonging to racial, ethnic and religious minorities from southern Sudan, the Nuba Mountains and the Ingassema Hills areas, their subjection to the slave trade, including traffic in and sale of children and women, slavery, servitude, forced labour and similar practices are taking place with the knowledge of the Government of the Sudan [25].

76. According to reports, thousands of domestic workers are being brought into the United States by foreign diplomats and employees of international organizations such as the International Monetary Fund, the United Nations and the World Bank and then exploited and subjected to abuse. Under United States immigration law, foreign diplomats, embassy employees and officials of organizations such as the World Bank, the International Monetary Fund and the United Nations may bring in personal domestic workers on A-3 or G-5 visas. Although these thousands of workers, most of whom are women, are supposed to be protected by labour laws and paid a minimum wage, there has been little oversight. As a result, some of these women are subjected to conditions of forced labour or slavery-like practices. In some cases, employers have reportedly confiscated the employee's passports, required round-the-clock services with little or no pay, restricted contact with other domestic workers, confined employee movements and physically abused the workers. Since the domestic worker's legal immigration status is dependent upon her contract, the worker may face deportation if she tries to escape the situation. In 1999, the United States Attorney General formed a "worker exploitation task force" to investigate allegations of abuse. It has been pointed out that visa programmes, that make immigrant's legal status contingent upon their employment status with a specific employer turns employees into captive workers in situations of indentured servitude. A new advocacy group in Washington D.C., Campaign for Migrant Domestic Workers' Rights, is attempting to hold the World Bank and IMF responsible, since the organizations help to facilitate the process of bringing domestic workers into the country. They are working to get the World Bank to help inform domestic workers of their rights and to sponsor a $350,000 a year monitoring programme that would require staff members to submit copies of contracts, tax forms and proof of wage payment. While the World Bank has expressed willingness to discuss the proposal, IMF has reportedly rejected the group's requests for discussion.

77. The instability of Eastern Europe after the fall of the Berlin Wall has led to an increase in trafficking from Eastern Europe and the former Soviet Union. The situation of armed conflict in the Balkans has likewise contributed to an increase in trafficking in the region. According to reports from NGOs such as the Southall Black Sisters and Keighley Women's Domestic Violence Forum, forced marriages, by which it is sought to control young women's freedom and sexuality, are on the rise in Asian communities in Britain. Such marriages should be

distinguished from consensual arranged marriages, which continue to be the norm in many sections of the Asian diaspora. In Austria, in 1998, the police uncovered a trafficking ring, which resulted in the arrest of 18 traffickers. Twenty women were reportedly freed, many of whom returned to their homes. Some victims, however, stayed in Vienna to testify against the traffickers.

VIII. REMEDIES: FROM RESCUE AND REHABILITATION, TO RIGHTS AND REDRESS

A. Governmental responses

78. "If and when we figure in political or developmental agenda, we are enmeshed in discursive practices and practical projects which aim to rescue, rehabilitate, improve, discipline, control or police us. Charity organizations are prone to rescue us and put us in 'safe' homes, developmental organizations are likely to 'rehabilitate' us through meagre income generation activities, and the police seem bent upon to regularly raid our quarters in the name of controlling 'immoral' trafficking. Even when we are inscribed less negatively or even sympathetically within dominant discourses we are not exempt from stigmatization or social exclusion. As powerless, abused victims with no resources, we are seen as objects of pity. Otherwise we appear as self-sacrificing and nurturing supporting cast of characters in popular literature and cinema, ceaselessly ready to give up our hard earned income, our clients, our 'sinful' ways and finally our lives to ensure the well-being of the hero or the society he represents. In either case we are refused enfranchisement as legitimate citizens or workers, and are banished to the margins of society and history."[26]

79. The international community has, since the early 1900s, classified trafficking of women as a serious abuse of women. Over time, thinking about trafficking has changed, as have the strategies through which trafficking is addressed. Punitive measures, prevention, rescue and rehabilitation have all been employed to combat trafficking. Irrespective of the means of redress, however, one thing has remained constant - the lack of political will in terms of guaranteeing the human rights of trafficked women. The Special Rapporteur would like to note her concern at the apparent lack of political will, in countries of origin, transit and destination, to provide legal protection to trafficked women. Not only have States failed to develop appropriate mechanisms of prevention and redress for victims of trafficking, but they have also failed to employ existing laws - such as laws against assault, rape, kidnapping and extortion - to prosecute traffickers.[27]

80. Any remedy or strategy proposed to combat trafficking and provide assistance to victims of trafficking must be assessed in terms of whether and how it promotes and provides protection for the human rights of women. It has been pointed out that even seemingly harmless mechanisms of prevention, such as education campaigns, may be problematic if they aid in the immobilization of women or the entrenchment of harmful or disempowering stereotypes. While anti-trafficking campaigns may merely seek to warn women of the potential dangers of trafficking, they may also serve to further restrict women's free movement.

81. Methods of forcible rescue and rehabilitation of sex workers, such as those reportedly undertaken in India and Bangladesh, have been severely criticized by women's human rights

advocates, who report that such practices are coercive, often violent and, thus, in some cases violate the human rights of women. In July 1999, the police in Bangladesh cracked down on the sex industry, forcibly evicting women working in the red light districts of Tan Bazar and Nimtali in Dhaka. According to reports, the women have been given the option of either voluntarily submitting to government "rehabilitation" or being barred from continuing their business in Tan Bazar and Nimtali. After a pre-dawn police swoop on 24 July, many of the women fled. Others were forcibly taken to a home for vagrants, where they have reportedly been subjected to physical and sexual abuse. According to reports, the crackdown was initiated after a 22-year-old sex worker, Jesmin, was murdered on 1 July 1999. On 30 July, a group of unidentified youths opened fire at protestors who were demonstrating against the violation of human rights of the women of Tan Bazar and Nimtali. According to observers, the police failed to intervene.

82. One group in India queries where, in a country with unemployment of such gigantic proportions, the compulsion to displace millions of women and men who are already engaged in an income earning occupation which supports themselves and their extended families, comes from. If other workers in similarly exploitative occupations can work within the structures of their profession to improve their working conditions, why cannot sex workers remain in the sex industry and demand a better deal in their life and work?[28]

83. One of the responses increasingly employed by countries of destination is to place restrictions on previously open policies of immigration. For example, a State that has granted visas to dancers, models and strippers, who are perceived to be at high risk of being forced into sex work, may introduce the requirement that such women should be professional strippers. Such a requirement restricts the pool of women eligible to apply for such visas. It does nothing, however, to reduce the number of women seeking to migrate and thus may feed women who are willing to work as strippers, but who are not professional strippers, into the hands of traffickers. In this way, some legal reforms may create new opportunities for trafficking and may be counterproductive for women.

84. "Protective measures are not only problematic because of the reaction of traffickers, but also because of the measures' paternalistic nature that causes women to be further disadvantaged. For example, abolishing the visa category for dancers would further limit women's opportunities for legal migration, and drive yet more of them into the arms of traffickers. Finally, Governments may feel that entry restrictions absolve them of responsibility for persons trafficked into other States."[29] Reportedly, in Germany, special visa requirements were adopted for citizens of the Philippines and Thailand, owing to the disproportionate number of women entrants. Such restrictions generally do not limit trafficking or forced labour. Rather, they increase women's reliance on extra-legal means of migration, and the costs associated with such migration. Responses that target specific nationalities also serve to stigmatize women from certain countries as potential sex workers or undocumented migrants and increase patterns of discrimination against migrant women. According to reports, Thai women between the ages of 18 and 40 arriving in Hong Kong for the first time are routinely stopped by immigration for questioning in respect to their involvement in prostitution.

85. Although the clandestine nature of trafficking limits the capacity of victims to seek assistance when needed, the mere discovery by the State of the trafficked woman does not ensure that the woman's rights will be protected. Even when the State pursues a criminal case, there is

no guarantee of legal protection or prosecution. As in rape cases, women who are trafficked for sexual labour may be forced to prove they did not consent to sex work. Thus, women who worked as sex workers prior to being trafficked may be denied protection. Overwhelmingly, the law continues to be fuelled by moral considerations. As such, it may be that the only trafficked women who will be provided protection are those who fit into the stereotype of the young virgin "who was snatched off the streets by unscrupulous criminals, drugged, taken across an international border, raped and then chained to a bed or at least severely beaten to engage in sex for money, paid to her captors".[30] Both local and international media tend to feed into this portrayal of the appropriate trafficking victim as a young, virginal girl subjected to extreme violence and cruelty.

86. Once detected by the State, it is rare for trafficked men and women to be allowed to remain in the receiving State either for their own protection or to pursue legal redress. Deportation continues to be encouraged by both countries of destination and countries of origin as a response to trafficking. Deportation is often undertaken without coordination and without any attempt to ensure the protection of the women's human rights. For example, according to reports, in September 1997 Canadian police, with the cooperation of the United States police, raided brothels in San José, California and Toronto. The women who were being held there and who were being forced to work in situations of debt bondage were charged by Canadian officials with engaging in sex work and living in a bawdy house. At the urging of a Thai embassy official, two of the women confessed, so that they could return to Thailand. Those who did not confess stayed in Canada awaiting trail. Although the Thai Embassy in Ottawa issued the women Certificates of Identity, upon arrival in Bangkok, the women were reportedly arrested by Thai immigration officials because their Certificates of Identity indicated that they had arrived in Canada with false passports.

87. Reportedly, in 1997, more than 200 women were deported to Lithuania from Western countries for their undocumented status or illegal work. Of these, 28 reported that they had been forced to work as prostitutes. According to reports, Israel is a destination for trafficking from countries of the former Soviet Union, in particular Russia. Although some of the women knowingly seek to migrate for the sex trade, at the point of recruitment, they are reportedly deceived about the conditions and terms of work. Once in Israel, they are allegedly kept in virtual slavery. Many women linger in Israeli jails, after they are picked up in raids, since they cannot afford to pay for their deportation. Israel will not pay the cost of deporting undocumented workers. The women also reportedly live in fear of the leaders of the trafficking rings. It is this fear that enables the rings to maintain complete control over the women, who are afraid to turn to the police for help. Further, it has been reported that, while trafficked women are often arrested as illegal workers, the traffickers are rarely arrested. According to information received, Israel has no laws specifically to address trafficking or the sale of human beings. According to reports, in a three-year period, Israel deported approximately 1,500 Russian and Ukrainian trafficked women.

88. There is a need to move from a paradigm of rescue, rehabilitation and deportation to an approach which is designed to protect and promote women's human rights, in both countries of origin and countries of destination. Although some women may be traumatized by their experiences and may, on a case-by-case basis, desire counselling and support services, overwhelmingly it is not "rehabilitation" that women need. Rather, they may need support and

sustainable incomes. The Special Rapporteur calls on Governments to move away from paternalistic approaches that seek to "protect" innocent women to more holistic approaches that seek to protect and promote the human rights of all women, including their civil, political, economic and social rights.

1. Governmental responses: some examples

89. Programmes to combat trafficking and respond to the needs of trafficked persons are often confined to providing information to women about the risks of illegal migration. Sometimes special stamps are used in passports to denote that the woman has worked as a domestic worker or in prostitution. This may then be used against her when she seeks to exercise her freedom of movement and travel to another country. Other protective measures include: selective deployment to countries of destination with special laws and mechanisms of protection for foreign workers, bilateral or multilateral agreements on migrant workers, blacklisting of foreign employers who default on their contractual obligations, training, pre-qualification screening, and the posting of escrow deposits by foreign employers in the currency of the country of origin to cover claims against the employer or promoter.

90. Some national laws continue to define trafficking solely in terms of prostitution. Others fail to distinguish been consensual and non-consensual movement, despite the fact that these two forms of movement exist simultaneously. In Paraguay, for example, according to information submitted to the Division for the Advancement of Women by the Permanent Mission of Paraguay to the United Nations in 1997, "in cases of commerce, traffic and transfer from one country to another of an adult woman to practise prostitution, *even with her consent*, and of recruitment with this aim the penalty will be imprisonment from four to eight years" (emphasis added). Similarly, article IX, paragraph 1 of Poland's Criminal Code dismisses the issue of consent. However, some Governments are moving towards recognition of trafficking in all its forms. The Special Rapporteur is encouraged to note that Austria, in 1996, amended its Penal Code, extending its provisions to cover trafficking in persons for purposes other than sexual exploitation. According to section 104a of the Penal Code, "anyone who by false representation as to the possibility of residing as an alien in a country or performing a lawful activity therein, induces another person to enter a country illegally and to pay or commit himself/herself to pay him for the passage, shall be liable to a prison sentence of up to three years". Additionally, paragraph 2 of the same section legally proscribes enabling a person to enter another country illegally for the purpose of his or her exploitation. The provisions allow for enhanced penalties when the crimes are committed professionally or by a criminal organization.[31]

91. Reportedly, in the United States a battle is being waged between the various sides of the trafficking debate in the context of a new law on trafficking. Two bills - the Wellstone resolution and the Smith-Gejdeson bill - are both working their way through the legislative process. One of the major differences between the two is the definition of trafficking. The Wellstone resolution defines trafficking broadly to include forced labour, whereas the Smith-Gejdeson bill defines trafficking solely in terms of sex work. In 1998, President Clinton issued an Executive Memorandum on Steps to Combat Trafficking. Such steps include public-awareness campaigns, the production and distribution to visa seekers of brochures in Russian, Polish and Ukrainian about trafficking, and the sponsoring of conferences abroad. Although protection, legal counselling and other services for victims of trafficking were

envisioned in the strategy to combat trafficking, according to reports, such programmes have not been implemented. In many cases, trafficking victims have been caught in raids by the Immigration and Naturalization Service (INS). In such cases, and contrary to policy statements, victims are often deported or detained in INS detention facilities or local jails.

92. The Government of Canada, in its submission to the Secretary-General in respect to resolution 51/66 on traffic in women and girls, stated that "the selective use of visitor visas remains a primary means of preventing illegal entry", which suggests an anti-immigration approach to trafficking. Further, although specifying that there is a lack of provisions on trafficking, the Government points to its Immigration Act's prohibitions on illegal entry and assisting persons to enter illegally as useful in combating trafficking. According to its submission, Canada may delay the removal of persons who assist in prosecuting "a people smuggler". While emphasizing the seriousness of trafficking as a form of violence against women and as a violation of human rights, Canada simultaneously seems to rely on an anti-immigration approach that confuses alien smuggling with trafficking.

93. According to information received by the Division for the Advancement of Women from the Government of Cyprus, officers of the Aliens and Immigration Department of Police are responsible for informing women entering the country as performers or maids of their rights and obligations, as well as for providing information about mechanisms of protection against abuse, exploitation and procurement into prostitution.

94. In Belgium, trafficked persons are given a 45-day "rest period" during which they can decide whether to press charges against the traffickers. A three-month temporary residence permit, which entitles trafficking victims to social benefits if they are unable to find employment, is issued to women who decide to proceed with a case. This permit is renewable for an additional six months if the trial continues beyond three months. Additionally, the Government of Belgium has funded the establishment of shelters in Brussels and Liège for victims of trafficking.

95. Ireland has instituted a programme that allows asylum-seekers to obtain permits to work legally while their case is pending. The permits may be issued to asylum-seekers, as well as to people coming to Ireland from non-EU countries and Eastern Europe to work. The Justice Minister reportedly said that the Government is considering anti-trafficking measures similar to the work permits for asylum-seekers.

96. In Denmark, a new law legalizing adult prostitution came into effect on 1 July 1999. This law makes it illegal to purchase sex from anyone under the age of 18; contravention is punishable by a maximum of two years in prison. Reportedly, Demark has simultaneously increased its efforts to prevent the sexual exploitation of minors, to help women who want to leave the sex trade and to stop trafficking of women for the purpose of forced sexual labour.

97. Countries of origin, such as the Philippines, increasingly are formulating measures that seek to ensure migrant women are better equipped to migrate internationally through skills development. Requirements that migrant workers should speak, write and read English, minimum age requirements and registration are being employed by countries of origin in their anti-trafficking strategies. In the Philippines, such requirements depend on the type of work and

the country to which the woman is travelling. For domestic workers, the minimum age is usually 25 years, except for those going to Saudi Arabia and Bahrain, who must be 30 years old. The minimum age for entertainers, however, is 21. In many cases, such policies are being enforced through a specific government agency set up to work with migrants. In other cases, Governments are using a multi-agency response to trafficking. Mexico, the Philippines, Austria, Cyprus, Colombia and Germany, for example, have all adopted an inter-agency response to combat trafficking.

2. Bilateral, multilateral and regional responses

98. The Special Rapporteur would like to commend the European Union for its efforts to combat trafficking through a victim-sensitive, regional programme of action that combines a European judicial policy and European equal opportunity policy in the "Hague Declaration on the Question of Trafficking in Women". The Declaration reportedly serves as a common political statement of the European Union member States and is intended to be followed up with European guidelines for effective measures to prevent and combat trafficking in women. The Declaration, which was adopted by consensus, calls on member States to, inter alia: (i) provide or explore the possibility of providing national rapporteurs who will gather, report to Governments and exchange information on the scale of trafficking, as well as measures taken to prevent or combat trafficking; (ii) undertake information campaigns in countries of origin and destination focusing on preventing trafficking in women; (iii) acknowledge that trafficked women are victims of a crime so that they are not treated solely as illegal immigrants and deported; (iv) provide victims of trafficking with time to reflect and with support before they report the crime or agree to serve as witnesses in the prosecution of the crime, and to facilitate this process by providing trafficked women with legal, financial and medical assistance; (v) provide trafficked women with temporary residence status and protection during criminal proceedings, when necessary; (vi) train the police and judiciary on the nature and characteristics of trafficking; and (vii) work, within the framework of development cooperation, to improve the economic and social status of women in countries of origin.

99. In 1998, the United States Government and the European Union undertook an information campaign to combat trafficking in women through central Europe and the newly independent states of the former Soviet Union, in particular Ukraine and Poland. This campaign targeted potential victims in order to warn them of methods used by traffickers and provided information to local border and consular officials to help them recognize and deter trafficking in women from third countries to their region through group discussions, public service messages, poster and pamphlet distributions and magazine and newspaper articles.

100. The Special Rapporteur is encouraged to note the formation of the Regional Consulting Group on Migration, comprised of Belize, Canada, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, and the United States, and encourages the respective Governments to ensure that the section of their action plan on human rights, as well as international human rights instruments, are given full effect in respect of migrants generally, of whom women comprise a large percentage. The Special Rapporteur also encourages the respective Governments to ensure gender-specific protections are in place to protect the human rights of both migrant women and trafficked women.

B. Non-governmental responses

101. Women's migration and trafficking in women have been priorities for international women's movements worldwide. Women's organizations have been at the forefront in lobbying and policy development relating to migration and trafficking. They have also developed programmes to meet the needs of returning or returned women, to assist them to reintegrate into society. In some cases, however, women's organizations ascribe to the same perceptions and stereotypes as those that tend to misinform governmental policy in regard to more and less deserving victims, particularly in the case of trafficking. Likewise, some women's organizations are fuelled by a moral imperative of "saving" innocent women. Thus, some programmes derive from the perception that women need to be "rescued and rehabilitated", rather than supported and granted rights. Other organizations, however, take a more obvious pro-rights approach that seeks to assist women in a process of empowerment and independence.

102. For example, the Foundation for Women and the Global Alliance against Trafficking in Women helped facilitate the voluntary repatriation of 23 Myanmar and Thai women and girls who had been trafficked to Bangkok. The effort entailed coordinating with many authorities, governmental and non-governmental, to ensure that the women and girls were treated as trafficked persons rather than illegal immigrants. Reportedly, the women and girls have been reintegrated into their villages and are developing income-generating projects.

103. The Special Rapporteur is encouraged to note a trend towards the establishment of shelters specifically geared to work with trafficked persons. The Salamon Alapitvany and Ildikok Memorial Civil Rights Institute set up an emergency respite centre in Hungary for "sex workers seeking relocation and diversion from coerced labour or trafficking". Women referred to the centre have an immediate 30-day respite, during which they can apply for a further 90-day stay in Hungary. Reportedly, the first shelter for trafficked women was recently opened in the United States by the Coalition against Slavery and Trafficking. It provides shelter and services to trafficked persons.

104. The GABRIELA Network - a United States-based, multiracial, multi-ethnic United States-Philippine women's solidarity organization - has been working on the issue of trafficking for a long time. It has recently launched its Purple Rose Campaign. This campaign seeks to raise awareness about sexual violence and human rights abuses against women by asking individuals, in particular men, to make a commitment to opposing the traffic in women and avoiding patronizing the sex trade: people are asked to sign a card stating the above and are given a purple rose pin to symbolize this pledge.

105. In challenging abusive practices associated with migration and forced labour, NGOs have used the law in innovative ways. In January 1999, three lawsuits - the first of their kind - attempting to hold United States companies legally responsible for mistreatment of workers in foreign-owned factories operating on United States soil, were filed. According to reports, the companies, which include The Gap, Tommy Hilfiger, The Limited, J.C. Penny, May Company, Sears and Wal-Mart, are alleged to have engaged in a racketeering conspiracy and to have used indentured labour, mostly young Asian women, to produce clothing on the island of Saipan, which is part of the United States Commonwealth of the Northern Mariana Islands. Two class action lawsuits were filed in a federal court on behalf of 50,000 workers from China, the

Philippines, Bangladesh and Thailand and one lawsuit was filed in a California state court by four labour and human rights groups, Sweatshop Watch, Global Exchange, Asian Law Caucus and UNITE, accusing the retailers and manufacturers of using misleading advertising and of trafficking in "hot goods" manufactured in violation of United States labour laws. The lawsuits seek more than $1 billion in damages, disgorgement of profits and unpaid wages.

106. Non-governmental organizations have been instrumental in efforts to create new national and international standards on migration and trafficking. One of the most noteworthy products of a collaborative process by the Global Alliance against Traffic in Women, the Foundation against Trafficking in Women and the International Human Rights Law Group is the Human Rights Standards for the Treatment of Trafficked Persons (January 1999). "The Standards are drawn from international human rights instruments and formally-recognized international legal norms. They aim to protect and promote respect for the human rights of individuals who have been victims of trafficking, including those who have been subjected to involuntary servitude, forced labour and/or slavery-like practices."[32] The Special Rapporteur would encourage Governments to utilize the Human Rights Standards in creating new policies and laws. She would encourage the international community to do the same.

IX. RECOMMENDATIONS

A. At the international level

107. The protocol on trafficking to the draft international convention against transnational organized crime should ensure an unequivocal human rights standard on trafficking in women, since it is impossible to combat trafficking without providing protection to victims of trafficking.

108. States should seek to adopt bilateral and multilateral agreements providing for the legal labour migration of women.

109. States should ensure support for the institutionalization of the rule of law in countries currently in transition, in situations of armed conflict or under military regimes.

110. Non-governmental organizations should be granted observer status at the meetings of Heads of State of regional forums, such as SAARC, ASEAN, OAU and OAS.

B. At the national level

111. Measures designed to limit women's legal entry into countries of destination should be carefully weighed against their disadvantages as they pertain to potential immigrants and women. In particular, measures that are designed to protect women by limiting their access to legal migration or increasing the requirements associated with such migration should be assessed in terms of the potential for discriminatory impact and the potential for increasing the likelihood that women consequently may be subjected to trafficking.

112. Government programmes and international efforts relating to trafficking should be developed in cooperation with non-governmental organizations. Further, governmental

organizations and international donor institutions should provide financial support to non-governmental organizations working on the issue of trafficking.

113. Governmental measures and international efforts to address trafficking must focus on the human rights abuses and labour rights abuses of the women involved, rather than treating trafficking victims as criminals or as illegal migrants.

114. Government measures to address trafficking must focus on the promotion of the human rights of the women concerned and must not further marginalize, criminalize, stigmatize or isolate them, thus making them more vulnerable to violence and abuse.

115. Relevant governmental bodies must collect and publish data on:

(a) Government efforts to address instances of trafficking into, out of, and within their countries;

(b) The successes or difficulties experienced in promoting inter-agency cooperation, cooperation between local and national authorities, and cooperation with non-governmental organizations;

(c) The treatment and services provided to trafficking victims;

(d) The disposition of trafficking cases in the criminal justice system;

(e) The effects of governmental legal and administrative measures on the victims of trafficking and on the reduction of trafficking.

116. Trafficking victims must be guaranteed:

(a) Freedom from persecution or harassment by those in positions of authority;

(b) Adequate, confidential and affordable medical and psychological care by the State or, if no adequate State agency exists, by a private agency funded by the State;

(c) Strictly confidential HIV testing services should be provided only if requested by the person concerned, and any and all HIV testing must be accompanied by appropriate pre- and post-test counselling;

(d) Access to a competent, qualified translator during all proceedings, and provision of all documents and records pursuant to having been victims of trafficking and/or forced labour or slavery-like practices;

(e) Free legal assistance;

(f) Legal possibilities of compensation and redress for economic, physical and psychological damage caused to them by trafficking and related offences.

117. The personal history, the alleged "character" or the current or previous occupation of the victim must not be used against the victim, nor serve as a reason to disqualify the victim's complaint or to decide not to prosecute the offenders. For example, the offenders must be prohibited from using as a defence the fact that the person is, or was at any time, a sex worker or a domestic worker.

118. The victim's history of being trafficked and/or being subjected to forced labour and slavery-like practices must not be a matter of public or private record and must not be used against the victim, their family or friends in any way whatsoever, particularly with regard to the right to freedom of travel, marriage and seeking gainful employment.

119. States under whose jurisdiction the trafficking and/or forced labour and slavery-like practices took place must take all necessary steps to ensure that victims may press criminal charges and/or take civil action for compensation against the perpetrators, if they choose to do so.

120. Governments must implement stays of deportation and provide an opportunity to apply for permanent residency, witness protection and relocation assistance for trafficking victims.

121. Governments should implement assessed forfeiture from criminal operations that profit from trafficking, setting aside funds to provide compensation due to victims of trafficking.

122. In consultation with relevant non-governmental organizations, relevant government bodies must:

(a) Develop curricula and conduct training for relevant government authorities, including officials of immigration and consular affairs offices, customs services, border guard and migration services, and representatives of the Ministry of Foreign Affairs, regarding the prevalence and risks of being trafficked, and the rights of victims. The training of such officials must not result in the creation of "profiles" which prevent women from receiving visas to go abroad;

(b) Develop awareness and education campaigns regarding trafficking to be conducted through the mass media and community education programmes;

(c) Distribute materials describing the potential risks of being trafficked, including information on the rights of victims in foreign countries, including legal and civil rights in the areas of labour and marriage and for crime victims, and the names of support and advocacy organizations in the countries of origin, destination and transit;

(d) Take measures to ensure that women have viable economic opportunities to support themselves and their dependent families in their home countries;

(e) Abide by the United Nations General Assembly resolution 49/165 on violence against women migrant workers, of 23 December 1994, and should sign, ratify and enforce the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

(f) Adopt and implement guidelines recognizing gender-related persecution as a basis for women to claim refugee status, in addition to signing and ratifying the 1951 Convention on the Status of Refugees and the 1967 Protocol thereto, and implement the 1991 UNHCR Guidelines on the Protection of Refugee Women;

(g) Ensure that all trafficking legislation is gender sensitive and provides protection for the human rights of women and against the particular abuses committed against women;

(h) Provide training for diplomats and foreign service employees about trafficking and the human rights abuses committed in the course of trafficking;

(i) Establish labour information centres to provide up-to-date, practical information on all aspects of labour migration.

Notes

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[3] Economic and Social Council decision 16 (LVI) of 17 May 1974.

[4] Vienna Declaration and Programme of Action, A/CONF.157/23, adopted on 25 June 1993.

[5] Forward Looking Strategies, paras. 290 and 291, Nairobi, 1985.

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[8] Nora Demleitner, The Law at the Crossroad; the Legal Construction of Migrants Trafficked into Prostitution, p. 12.

[9] Marjan Wijers and Lin Lap-Chew, Trafficking in Women, Forced Labour and Slavery-like Practices in Marriage, Domestic Labour and Prostitution, STV 1997, p. 45.

[10] Ibid.

[11] Nora Demleitner, op.cit., p.9.

[12] Global Alliance Against Traffic in Women, Foundation Against Trafficking in Women and International Human Rights Law Group, Human Rights Standards for the Treatment of Trafficked Persons, January 1999.

[13] Ibid.

[14] Velásquez-Rodriquez case, Judgment of 29 July 1988, Inter-Am. Ct H.sR. (Ser. C) No. 4, para. 167. 1988.

[15] For a comprehensive overview of the above, see John Cerone, "State accountability for the acts of non-state actors: the trafficking of women for the purpose of sex industry work", 1999, unpublished manuscript on file with the Special Rapporteur.

[16] Cerone, p. 59, citing Velásquez-Rodriquez case, para. 175.

[17] Ibid., p. 58, citing Atico v. Italy, series A, 37 ECTHR 16.

[18] See the Report of the Special Rapporteur on violence against women, E/CN.4/1996/53, 5 February 1996, for a more detailed life-cycle analysis of violence against women.

[19] Wijers and Lap Chew, op.cit., p. 143.

[20] See, Report of the Special Rapporteur on violence against women, E/CN.4/1998/54, 26 January 1998, paras. 115-159, for a discussion of custodial violence.

[21] Demleitner, op. cit. p. 27.

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[23] Ibid., p. 6.

[24] Jyoti Kanic, Global Survival Network, "Trafficking in women", in Foreign Policy in Focus, vol. 3, No. 30, October 1998, p. 1.

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[27] Wijers and Law-Chew, op. cit., p. 152.

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[31] Report by the Republic of Austria on the implementation of General Assembly resolution 51/65 on Violence against Women Migrant Workers, July 1997, p. 2.

[32] Global Alliance against Traffic in Women, the Foundation against Trafficking in Women and the International Human Rights Law Group, Human Rights Standards for the Treatment of Trafficked Persons, January 1999, p. 1.